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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

FRANK J. CAMOSCIO,

PETITIONER,

VS.

BOARD OF REGISTRATION IN PODIATRY,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE COMMONWEALTH OF MASSACHUSETTS

PETITION FOR A WRIT OF CERTIORARI

FRANK J. CAMOSCIO
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252 HANOVER STREET
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(617) 720-2849

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE COMMONWEALTH OF MASSACHUSETTS

Petitioner, Frank J. Camoscio, respectfully prays that the writ of certiorari issue to review the judgment and opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts entered in the above cause on November 2, 1990.

I.

OPINION BELOW

The memorandum opinion of the Supreme Judicial Court is attached as Appendix A. The decision of the single justice of the Supreme Judicial Court is attached as Appendix B.

* * *

II.

JURISDICTION

The opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts was filed on November 2, 1990. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. § 1254(1).

III.

CONSTITUTIONAL PROVISIONS INVOLVED

Article III, Section 2(1) of the United States Constitution provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;— to all Cases affect-

ing Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; — between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Amendment VII of the United States Constitution provides:

In Suits at common law, where the value in controversy shall

exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

IV.

STATEMENT OF FACTS

The Petitioner, Frank J. Camoscio, was a victim of the Board of Registration in Podiatry's and other state official's abuse of power resulting from his speaking out against the issuing of podiatric licenses to unqualified individuals because it was his duty being record-keeper of the Massachusetts School of Podiatry. After exposing Edward Fleming who was a high-school drop-out and convicted felon, the Pe-

titioner became a target of the Board's abuse. Edward Fleming's license was finally removed after appearing before Judge Joseph DeGuglielmo. See Addendum C for his decision, paying particular attention to underlined sections, A7 & A8 of his decision. Petitioner appeared before a grand jury in which 35 indictments were handed down but none were ever served because the attorney general blocked said service. Publicly, the Chairman of the Board of Registration in Podiatry on January 30, 1980 stated in a Boston Globe article entitled "Foot Doctor Lacking Degree Given License" described the Petitioner "as the bane of my existence." Edward Fleming and Dr. Connolly the Chairman of the Board of Registration in Podiatry practiced and lived together at 71 Broad Street, Lynn, Massachusetts.

During the same time period, the

Board sent the Petitioner a letter to show cause stating that three patients Elaine R. Favuzza, Carrie I. Smith, and Mildred Buonato had filed complaints. The Board then started adjudicatory hearing proceedings under MGL c. 112 § 61. All three patients involved never filed a complaint nor gave the Board permission to act on their behalf or release their medical records. One patient was a psychiatric patient and, therefore, the Petitioner, bound by law, could not release the medical records without court order or patient permission. The Board suspended the Petitioner's license on July 29, 1982. The Board stated that they did not know if they had a case unless they saw the patients' medical records. Judge Abrams ordered that the Board conduct hearings within ninety days and then the Board could then inspect the rec-

ords.

The Board conducted adjudicatory hearings scattered over a year and a half's time frame. The hearing officer tried to claim that the Petitioner was using vulgarity during one of the hearings and, therefore, should be barred from representing himself. Petitioner was forced to go before Judge Ronan to regain his right of representation. The Petitioner gave his proofs, affidavits of clergy, as well as laymen, who witnessed the alleged event. Also given was a copy of the adjudicatory hearing tape proving that no vulgarities existed at the hearing. Judge Ronan restored the Petitioners right to represent himself.

On the last hearing date in December, 1983 the hearing officer refused the Petitioner's right to go before a Superior Court judge to enforce

subpoenas. The hearing officer stated that Dr. Lloyd Smith's testimony as a state medical witness would be stricken since he had refused to return to the stand for cross-examination because of perjured statements made by him. The hearing officer stopped the hearings after Petitioner insisted on facing his accusers, the Board members. On June 28, 1982 at the adjudicatory hearing the Board of Registration in Podiatry stated that they were the moving party in this case concerning Carrie Smith.

The hearing officer, had previously agreed at a pre-trial hearing that some of these board members would testify at the adjudicatory hearing. These members were Edward Smith, Dr. Thomas Connolly and Dr. John George. The hearing officer refused the Petitioner's right to face his accusers.

In January, 1983 Thomas Connolly Chairman of the Board of Registration in Podiatry attacked the Petitioner outside his office with two other men. After a brief scuffle, Connolly was cornered in a local restaurant where he stated that the Petitioner would lose his license forever. The next day, the hearing officer came down with his decision recommending permanent license revocation. Proving that chairman of the Board influenced the hearing officer decision destroying due process. The Board adopted his decision permanently removing the Petitioner's license on April 1, 1984. During this time period the Petitioner obtained legal counsel through Enoch Woodhouse. This attorney was to represent the Petitioner before the state supreme court but was forced to resign after receiving a threat on his life from Attorney General of the

Commonwealth of Massachusetts Francis X. Bellotti. Enoch Woodhouse is a black attorney and Bellotti told him to get off the Camoscio case or what had happened to Martin Luther King would happen to him. If history serves me correctly Martin Luther King was assassinated. The Petitioner appeared before Judge Joseph Nolan sitting in the Supreme Judicial Court with a Motion informing him of this threat but, to date, Judge Nolan has refused to take any action. Other attorneys are too afraid to take tis case for fear of their personal safety or their career. Due to this, the Petitioner was forced to represent himself. The SJC upheld the Board's decision which was the hearing officer's decision. The hearing officer stated that the stricken testimony of Dr. Lloyd Smith weighed heavily against the Petitioner. The SJC decision in 1985

was solely based on 801 pages of transcript given to them by the Board, containing duplicated and missing pages. These transcripts contained tapes of hearing that were omitted and the entire testimony on Elaine R. Favuzza was destroyed by the hearing officer because these tapes on Ms. Favuzza were extremely damaging to the Board of Registrations case.

The official transcript that was agreed upon by the hearing officer Clewell to be that of Levine and O'Brien Court Stenographers which was provided at the hearings and paid for by the Petitioner was not given to the SJC. Under MGL c. 112 § 64 the state supreme judicial court can only act on the material given to them by the Board. The SJC made a decision on records that were not the official transcript, void of exhibits, court orders,

destroyed testimony and the only two doctors that were the states expert witnesses who while still under oath and subpoena and still giving testimony refused to return to the stand because they had committed perjury.

The Petitioner not being an attorney took several years to learn that he is entitled to equity under both state law MGL c. 214 § 1 and U.S. Constitution, Article III. The Petitioner filed with the state supreme court a Petition of Equity on December 18, 1989. The Attorney General James Shannon did not deny the fraud outlined in this petition nor offer any opposition to it. Judge Wilkins denied said petition on January 23, 1990. The Petitioner then filed an appeal to the full bench of the state supreme court. Again, the attorney general refused to respond. This time the Peti-

tioner filed several motions asking that the matter be settled by a trial by jury, that several judges step aside because of their personal involvement, and that the attorney general be prosecuted for knowingly withholding evidence, committing fraud in the previous proceedings before the SJC.

The Supreme Judicial Court stalled oral arguments from May to November 1990. Finally, they denied the Petitioner's right to present oral arguments after sending him notice that oral arguments would be heard on November 8, 1990. The court came down with their decision on November 2, 1990 and also with a gag order denying Petitioner equal access to the State Supreme Judicial Court. The Petitioner filed for a rehearing on November 14, 1990 but the SJC voted not to accept said petition on December 12, 1990, thus

proving the Petitioner has been denied equal access to the courts, also proving the courts prejudice against the Petitioner.

V.

REASON FOR GRANTING THE WRIT

A. THIS CASE PROVIDES THIS COURT WITH AN OPPORTUNITY TO RESTORE THE PETITIONER'S RIGHT TO EQUITY.

The state supreme judicial court violated all principles of equity when they came down with their November 2, 1990 decision. There was no question that the court lacked judicial basis to find against the Petitioner since the attorney general did not offer any opposition or counterproofs that the Board of Registration in Podiatry withheld the following: transcripts of en-

tire hearing dated, letter to show cause, affidavits ordered to be part of the record by Judge Abrams, exhibits of the adjudicatory hearing, court proceedings against state medical witnesses proving they had knowingly presented false testimony at the adjudicatory hearings, and a court document showing that Chairman of the Board of Registration in Podiatry knew the hearing officer's decision prior to its release, thus proving biasness of the hearing officer. The state SJC found against the Petitioner in 1985 based solely on 801 pages of transcript given to them by the Board. See Addendum D. Under MGL c. 112 § 64 all the court can do is review the material given only by the attorney general, and cannot accept evidence from the Petitioner.

Since fraud had occurred and

evidence was withheld, and tampered with, the Petitioner is entitled to equity. The attorney general cannot knowingly suppress evidence under MGL c. 221 § 38. The Petition of Equity is treated as any complaint would be treated under the Rules of Civil Procedure. The single justice of the state SJC is the lower court in this case. A complaint was filed. The other side refused to answer or offer any counterarguments, and yet, the single justice was bound by law to find judgment in the Petitioner's favor or grant a trial if controversy existed.

The Petitioner appealed the decision to the full bench, because there was no legal basis for Judge Wilkins decision. The Petitioner also filed motions to have several of the judges including Judge Wilkins to step down because of their personal involvement

and previous wrongdoing in connection with this matter. These judges refused to step down and refused the Petitioner the right to present oral arguments on November 8, 1990, even though they had sent him written notice for scheduled oral arguments for that date. On November 2, 1990 they came down with their written decision and a court order barring the Petitioner from filing any papers with the state SJC unless a majority of the judges voted first to accept such filing. The Petitioner was then denied the right to file a petition for rehearing, even though the appeals rules call for this right. The court took over a month to respond and, finally, they stated that the court refused to accept the filing of the petition for rehearing.

In the November 2, 1990 decision, the court upheld the Board's right to

revoke the Petitioner's license based on the same reasons as their 1985 decision and stated that they previously reviewed all the Petitioner's arguments back then. Firstly, this was physically impossible since nine volumes of the original 1985 Appendix is missing from the State Social Law Library. Secondly, under MGL c. 112 § 64 the court can only act solely on the material given to them by the Board. Thirdly, they stated in their 1985 decision that they acted on the 801 pages of transcript given to them by the Board. In neither decision does this court tell what act that the Petitioner committed which resulted in the permanent loss of his podiatric license. The Board originally stated that their case solely rested on the patients' medical records. The state SJC in 1985 stated that these medical records were

impeccable. Yet the hearing officer and the attorney general never gave any of my medical records to the SJC to review in the 801 pages of transcripts, the court was bound by law only to act on this material therefore their decision violated MGL c. 112 § 64. In their 1985 decision the SJC stated that probable cause does not have to exist.
This is tyranny.

The greatest injustice is that stricken testimony weighed heavily against the Petitioner. The Board adopted the hearing officer's decision which stated that Dr. Lloyd Smith's testimony weighed heavily against Dr. Camoscio. The state SJC adopted the Board's decision in their 1985 decision and they reaffirmed that decision in their 1990 decision. In their decision of 1985 the SJC upheld the decision of the hearing officer. The hearing offi-

cer found the Petitioner guilty on evidence stricken from the record. Dr. Lloyd Smith's testimony was stricken because he had committed perjury while testifying. The Petitioner showed the hearing officer the proofs. Mr. Clewell the hearing officer struck Dr. Smith's testimony from the records. How could the SJC accept the hearing officer's decision when it was based on perjured and stricken evidence.

Dr. Jonathan Scarlet also committed perjury, he refused to return to the stand under subpoena and refused to release his records proving that he had committed perjury.

The hearing officer Robert Clewell had no right to strick perjured statements from the record and had no right to stop a man from testifying because a man committed perjury, he instead should have held these individu-

als to be sent to the proper authorities for prosecution.

The Petitioner cites the following cases: Karcher v. Burbank, (1939) 21 N.E. 2d 542, 303 Mass. 303, "An 'adequate remedy at law' which will deprive a court of equity of jurisdiction is a remedy as certain, complete, prompt and efficient to attain the ends of justice as the remedy in equity." and Branch v. Hempstead County Memorial Hosp., 539 F. Supp. 908, "While no particular form of hearing procedure is required to comport with procedural due process, certain elements must be present, namely, adequate notice, adequate opportunity for a hearing, the right to introduce evidence, and the right to confront and cross-examine witnesses. U.S.C.A. Const. Amend. 14."

VI.

CONCLUSION

This case presents an important constitutional issue of whether the Petitioner is entitled to equity as guaranteed by the Constitution. In other words, is the Petitioner entitled to his rights or is the Constitution a meaningless document ? The justices of this court have taken an oath to uphold the Constitution of the United States, therefore, these justices are bound to find in the Petitioner's favor.

Respectfully submitted,

Frank J. Camoscio

Frank J. Camoscio
Pro Se
252 Hanover Street
Boston, Massachusetts 02113

DATED: January 18, 1991

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 29, 1992
Domenic Bruno
1/18/91

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition For Writ of Certiorari were mailed to James M. Shannon, Attorney General, Commonwealth of Massachusetts, One Ashburton Place, Boston, Massachusetts 02108.

I hereby certify that all the statements contained in my Certificate of Service are true and are made under the pains and penalties of perjury.

Frank J. Camoscio

Frank J. Camoscio
Pro Se

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 29, 1992
Domenic Bruno
11/18/91

APPENDIX

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. 89-573

FRANK J. CAMOSCIO

v.

BOARD OF REGISTRATION IN PODIATRY

JUDGMENT

This matter came before the Court on the petition pursuant to G.L. c. 214, §1, it is ORDERED that the petition be, and the same hereby is, denied.

By the Court, (Wilkins, J.)

Susan Mellen

Assistant Clerk

Entered: January 23, 1990

S-5308 S.J.C.

FRANK J. CAMOSCIO vs.

BOARD OF REGISTRATION IN PODIATRY.

November 2, 1990.

Jurisdiction, Equitable.

The plaintiff, Frank J. Camoscio, appeals from the dismissal by a single justice of his complaint for equitable relief pursuant to G.L. c. 214, § 1 (1988 ed.). The plaintiff seeks equitable relief for the same issues he previously has brought to the court's attention. See Camoscio v. Board of Registration in Podiatry, 394 Mass. 1006, 1006-1007 (1985). See also Camoscio v. Board of Registration in Podiatry, 385 Mass. 1002-1003, cert. denied, 457 U.S. 1139 (1982); Camoscio v. Board of Registration in Podiatry of Mass.,

United States District Court Civil Action No. 85-3460-MA. The complaint was correctly dismissed by the single justice. It raises no issues not raised in the prior appeals or complaints and discloses no basis for equitable relief.

The judgment is affirmed. Further, it is ordered that neither the clerk of this court for Suffolk County (single justice session) nor the clerk for the Commonwealth (full court) accept any further filings from the plaintiff unless at least four Justices of this court authorize the filing.

So ordered.

Frank J. Camoscio, pro se, submitted a brief.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Superior Court
No. 99221

FRANK J. COMOSCIO,
Plaintiff,

vs.

THOMAS F. CONNOLLY, ROBERT A. SMITH, ANTHONY M. MAIELLA, WILLIAM B. GIADONE, HAMMOND I. BENDER, as they constitute the Board of Registration in Podiatry,
Defendants.

This is a petition brought under the provisions of G. L. c. 30A, S. 14 in which the Petitioner claims to be aggrieved by a decision, dated March 13, 1974, of the Respondent Board of Registration in Podiatry.

The case was submitted to the Court on a transcript of the record consisting of 247 pages and three exhibits.

Factually, it appears that the petitioner and one Dr. Edward J. Fleming are engaged in the profession of podiatry. On December 29, 1973, the petitioner, by letter to the respondent, challenged, inter alia, the educational prerequisites (see G. L. c. 112, S. 14 & 16) of Dr. Fleming for registration under the Statutes of the Commonwealth. The Board, after investigation, held a hearing at which the petitioners and Dr. Fleming were invited to attend together with counsel and witnesses.

On March 6, 1974, a hearing was held before respondent Board. The petitioners and Fleming with respective counsel were present and participated in the hearing. The petitioner and his witnesses testified and submitted exhibits. Dr. Fleming did not testify and presented no evidence.

The Court recognizes that under the mandate of Berman v. Board of Registration of Medicine, 355 Mass. 358, the decision of the Board as to whether to hold a hearing is purely discretionary and beyond review by the Court. However, once that discretion is exercised and the Board determines to hold a hearing, that hearing must be conducted under the rules of judicial procedure as promulgated by G. L. c. 30A, S. 14.

I rule that the petitioner herein, having been called as complainant to testify at a hearing, was made a party to the matter here under Paragraph 8 of G. L. c. 30A, S. 14. The hearing, once granted, must, as a matter of law, be cloaked with the same requirement of fairness and justice which is demanded in all judicial proceedings. All legislative prerequi-

sites pertaining to the educational requirements of an applicant for registration in the field of podiatry as provided by G. L. c. 112, S. 16 must be met.

The sole issue for determination by the respondents was whether Dr. Fleming had those educational prerequisites for registration as a podiatrist. The Board made no effort to inquire of Dr. Fleming as to his educational qualifications. Instead the board spent its entire time interrogating the petitioner and his witness. Questions were asked and when the petitioner attempted to answer or explain, he was interrupted and silenced. The petitioner's past personal experiences with the respondent were exploited. Member of the Board indicated hostility towards the petitioner. Private interviews between members of the Board and witnesses out-

side of the hearing room and not under oath were considered by member of the Board in his individual decision. Despite the virtual autocracy of the various administrative Boards they are still required to maintain an aura of justice and fairness. An examination of the transcript clearly shows that this standard was not met by the members of the respondent board.

Further, the respondents have no power to waive the educational prerequisites to registrater as set forth by the Legislature. Chapter 112, S. 16. The Board has still to determine whether Dr. Fleming has or has not met the requirements of c. 211, S. 16.

The respondents filed 15 requests for rulings. I do not pass on Requests for Rulings 1-10 because they are requests for findings of fact. I grant Request 12, 13 and 14 as abstract prop-

ositions of law. With the exception of the last sentence in Request Number 16, which reads, "Dr. Comoscio failed to sustain his burden in this case," is granted. I deny Request for Rulings Numbers 11-15.

ORDER

On the basis of the foregoing, I order the decision of the respondent Board annulled and the matter remanded for rehearing within 90 days from the effective date of this order under the provisions of G. L. c. 30A, S. 14, Subsec. 8d, e, g, for re-hearing consistent with the requirements enumerated herein.

By the Court:
Joseph A. DeGuglielmo

Joseph A. DeGuglielmo,
District Court Judge
Sitting in Superior Court

Entered: Sept. 22/78

394 Mass. 1006

Frank J. CAMOSCIO

v.

BOARD OF REGISTRATION

IN PODIATRY.

Supreme Judicial Court of Massachusetts, Suffolk.

Argued Feb. 8, 1985.

Decided April 9, 1985.

Frank J. Camoscio, pro se.

Suzanne E. Durrell, Asst. Atty. Gen., for defendant.

Before HENNESSEY, C.J., and WILKINS, LIACOS and O'CONNOR, JJ.

RESCRIPT.

The plaintiff (hereafter, appellant) seeks judicial review of a decision of the Board of Registration in Podiatry (board), adopting the recom-

mended decision of a hearing officer that the appellant had engaged in malpractice, concluding that as a matter of law the appellant was guilty of [illegible] "deceit, malpractice and gross misconduct in the practice of his profession," and revoking his license to practice podiatry. A single justice of this court transferred the action to this court without decision.

[1,2] 1. The appellant asserts that because there was no probable cause to investigate his actions, the proceeding was defective. The record shows an adequate basis for the board to investigate the matter and to issue a notice to show cause to the appellant. We do not imply that probable cause is required to issue a notice to show cause in a proceeding such as this. See G.L. c. 112, § 17A, and 801

Code Mass. Regs. § 1.01(6)(d) (1979). Even if such a showing were required, where there is substantial evidence presented at the hearing to warrant a finding of gross misconduct and the imposition of discipline, any absence of probable cause could be irrelevant, assuming (as was the case here) that the appellant received proper notice and had a proper hearing. See G.L. c. 30A, §§ 9-14, and G.L. c. 112, §§ 18, 61 & 62.

[3] 2. Any basis for objecting to an order issued by a judge of the Superior Court directing the appellant to produce patient records was waived when the appellant produced those records. Moreover, there is nothing incriminating in those records.

[4] 3. The appellant persists

in his argument that he was entitled to the testimony of his "accusers," the members of the Board of Registration in Podiatry. He presented no evidence that the hearing officer or any witness was, or was likely to have been, unfairly influenced against him by any board member. He had no right to the sworn testimony of the members of the board. See New England Medical Center, Inc. v. Rate Setting Comm'n, 384 Mass. 46, 56, 423 N.E. 2d 786 (1981).

[5-7] 4. Other arguments are without merit. (a) There is nothing in the record to indicate that the appellant was prejudiced by the delay in holding his hearing and in rendering a decision. A substantial portion of the delay was attributable to the appellant's own actions. (b) On a review of the transcript of the proceeding, con-

sisting of 801 pages, we see no denial of procedural due process to the appellant. The hearing officer handled fairly the not inconsiderable problems presented by the appellant's representation of himself. (c) The appellant should have sought judicial enforcement of any subpoena that the hearing officer declined to enforce. See G.L. c. 30A, § 12(5); School Comm. of Brockton v. Massachusetts Comm'n Against Discrimination, 377 Mass. 392, 403, 386 N.E. 2d 1240 (1979). (d) The appellant was given a full opportunity to present his case. He did not testify by his own choice. He does not argue here that the evidence did not warrant the hearing officer's findings, adopted by the board. The assertion that certain witnesses lied presents no question for appellate consideration. The credibility of witnesses was for the

agency. See Arthurs v. Board of Registration in Medicine, 383 Mass. 299, 304-305 & 308 n. 21, 418 N.E. 2d 1236 (1981). (e) The appellant has not demonstrated that he was prejudiced because the hearing officer did not fix the time for filing briefs after the hearing. There is no doubt that the appellant's position was fully presented by his various submissions and arguments in the course of the proceeding. (f) The discipline imposed, particularly considering the appellant's previous record of discipline by the board (see Camoscio v. Board of Registration in Podiatry, 385 Mass. 1002, 430 N.E. 2d 1212 [1982]), was within the board's discretion under G.L. c. 112, § 61. Levy v. Board of Registration & Discipline in Medicine, 378 Mass. 519, 528-529, 392 N.E. 2d 1036 (1979).

The action is remanded to the single justice with directions to enter a judgment affirming the decision of the Board of Registration in Podiatry.

So ordered.